

May 8, 2007

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Dynamac Corporation

Date of Filing: March 2, 2007

Case Number: TFA-0191

On March 2, 2007, Dynamac Corporation (Dynamac) filed an Appeal from a determination issued to it on January 29, 2007, by the Department of Energy's Office of Legacy Management. That determination was issued in response to a request for information that Dynamac submitted under the Freedom of Information Act, 5 U.S.C. ' 552, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1004. Dynamac asks that the DOE conduct an additional search for documents responsive to its request.

I. Background

On December 13, 2006, Dynamac filed a request in which it sought documents related to the former Harshaw Chemical Site located in Cleveland, Ohio. On January 29, 2007, the Office of Legacy Management issued a determination letter in which it stated that it conducted a search of its records but was unable to locate any responsive documents. On March 2, 2007, Dynamac filed the present Appeal with the Office of Hearings and Appeals (OHA). In its Appeal, Dynamac challenges the adequacy of the search conducted by the Office of Legacy Management and asserts that there should be records related to the Harshaw Chemical Site.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must conduct a search reasonably calculated to uncover all relevant documents.@ *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.@ *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); accord *Truitt*, 897 F.2d at 542. We have not

hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Doris M. Harthun*, 28 DOE & 80,282 (April 8, 2003) (Case No. TFA-0015).

We contacted the Office of Legacy Management to ascertain the extent of the search that was performed and to determine whether any documents responsive to Dynamac's request might reasonably be located. Upon receiving Dynamac's request for information, the Office of Legacy Management conducted a search in its Hummingbird database, which includes the CERCLA Environmental Database, using the keywords AHarshaw Chemical Site[®] and AHarshaw.[®] This database is a central electronic database that would be the most likely location of responsive information if any existed. Paper documents are no longer kept. *See* Record of Telephone Conversation between Sheila Dillard, Office of Legacy Management, and Kimberly Jenkins-Chapman, OHA (April 24, 2007). This search did not locate any responsive documents. Based on the information above, we find that the Office of Legacy Management has conducted a search reasonably calculated to uncover any records relating to the former Harshaw Chemical Site. Accordingly, we must deny this Appeal.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Dynamac Corporation on March 2, 2007, OHA Case No. TFA-0191, is hereby denied.

(2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. ' 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz
Senior FOIA Official
Office of Hearings and Appeals

Date: May 8, 2007

* All OHA FOIA decisions may be accessed at <http://www.oha.doe.gov/foia1.asp>.